Supreme Court, U.S.
FILED
AUG 26 2004
OFFICE OF THE CLERK

No. 04-

IN THE

Supreme Court of the United States

SAMUEL KENNEGTH BEAUMONT,

Petitioner,

v.

SAMMY CASTATOR, as Executor of the Estate of EARL WAYNE MEADOWS and as potential Heir; and KATHRYN L. CASTATOR CREASON, BETTY CARTER MASCHO, ROBERT MEADOWS, BILLIE J. CASTATOR MEYER, as potential Heirs, and ANY OTHER PERSON CLAIMING AS AN HEIR, KNOWN OR UNKNOWN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS DIVISION I OF THE STATE OF OKLAHOMA

PETITION FOR A WRIT OF CERTIORARI

MARK T. HAMBY
Counsel of Record
P. GAE WIDDOWS
BONHAM & HOWARD, P.L.L.C.
1500 Bank of America Center
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 744-7440

Attorneys for Petitioner

189362

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Providing personal services is consideration for an oral contract to devise. The common law of Oklahoma presumes that when a person provides substantial services of a personal nature to another person to whom he is not related by consanguinity or affinity he provides those services as consideration for a contract, not gratuitously. Samuel Beaumont and Earl Meadows had an oral contract. Samuel Beaumont provided substantial personal services to Earl Meadows for almost 24 years in a loving, caring, and committed relationship. In exchange for the services, Meadows left his entire estate to Beaumont by will, however the will failed. Beaumont seeks to enforce the oral contract.

The question presented is whether the Oklahoma Court of Civil Appeals violated Beaumont's right to Equal Protection when the court found that Beaumont and Meadows contracted to live as a family and used that finding to construe the presumption of gratuity *against* Beaumont since two hetèrosexual persons in the same type of relationship would have the protection of either intestacy laws if married or the presumption of non-gratuity if not.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iii
TABLE OF APPENDICES	v
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND COMMON LAW PROVISIONS	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION	10
CONCLUSION	12

TABLE OF CITED AUTHORITIES

Cases *Page*

Account Specialists & Credit Collections, Inc. v. Jackman, 1998 OK CIV APP 175, 970 P.2d 202 8

Allen v. Oklahoma City, 1935 OK 1143, 52 P.2d 1054 8

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930) 7

Brooks v. Yarbrough, 37 F.2d 527 (10th Cir. 1930) ... 9

Crossman v. Reeves, 1992 OK 12, 825 P.2d 1330 .. 6

Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. 1971), *aff'd*, 405 U.S. 970 (1972) 8

Francis v. Immigration & Naturalization Service, 532 F.2d 268 (2nd Cir. 1976) 8

Hand v. Warlick, 2001 OK CIV APP 105, 31 P.3d 1071 ..... 4, 9

Harder v. F.C. Clinton, Inc., 1997 OK 137, 948 P.2d 298 7

Johnson v. Hazaleus, 1959 OK 62, 338 P.2d 345 .. 2, 6, 8

Lawrence v. Texas, 539 U.S. 558 (2003) 9

Cited Authorities

	Page
Roberts v. United States Jaycees, 468 U.S. 609 (1984)	9
Romer v. Evans, 517 U.S. 620 (1996)	11
Shelley v. Kraemer, 334 U.S. 1 (1948)	7, 11
Standefer v. Standefer, 2001 OK 37, 26 P.3d 104	9
Tower v. Townie, 1961 OK __, 368 P.2d 488	9
Yick Wo v. Hopkins, 118 U.S. 356 (1886)	10
York v. York, 1953 OK 336, 270 P.2d 656	2, 6, 8
Statutes	
43 O.S. § 1	5
84 O.S. § 213	4, 6, 9, 11
28 U.S.C. § 1257	1, 5
28 U.S.C. § 2101	1, 5
United States Constitution	
14th Amendment	2, 5
Oklahoma Constitution	
Art. 2 § 7	8

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The Court Of Civil Appeals Of The State Of Oklahoma Filed February 13, 2004 ..... 1a

Appendix B — Judgment Of The District Court In And For Creek County, State Of Oklahoma Filed September 12, 2002 ..... 10a

Appendix C — Order Of The Court Of Civil Appeals, State Of Oklahoma Filed March 18, 2004 ..... 13a

Appendix D — Order Of The Supreme Court Of The State Of Oklahoma Denying Petition For Certiorari Filed June 1, 2004 ..... 14a

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Appeals in this case.

OPINIONS BELOW

On September 12, 2002, the trial court offered a brief unpublished opinion from the bench before entering judgment. (App. B) During closing argument by the heirs' counsel that Beaumont and Meadows had a relationship like a husband and wife, counsel asked the court to find that Beaumont had provided 24 years of services gratuitously and to sustain the heirs' demurrer. The court responded by stating that although it recognized that there was a long standing relationship and although the state should recognize the relationship, it did not and so the court was sustaining the demurrer. Beaumont filed his appeal, with the American Civil Liberties Union filing as amici curiae. On February 13, 2004, the Court of Civil Appeals by an unpublished opinion found that Beaumont and Meadows had a contractual agreement to live as a family, but again construed the presumption of gratuity against Beaumont, leaving him with no protection. (App. A) On March 18, 2004, the Court of Civil Appeals denied Beaumont's Petition for Rehearing. (App. C) The Oklahoma Supreme Court denied Beaumont's Petition for Certiorari on June 1, 2004.

STATEMENT OF JURISDICTION

The Oklahoma Supreme Court denied Beaumont's Petition for Certiorari on June 1, 2004. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a) and § 2101(c).

CONSTITUTIONAL AND COMMON LAW PROVISIONS

The Fourteenth Amendment to the United States Constitution provides that

> [n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Oklahoma Supreme Court held "[w]here the provider of personal services is in no way related to the person for whom the services were provided, there is no presumption such services were rendered gratuitously."[1] In the same vein the Oklahoma Supreme Court has held that there is "a 'presumption' in the case of close relatives, that [personal] services were furnished gratuitously and more because of mutual love, affection, esteem, high regard, gratitude, and/or hope of some future but undetermined reward, than in performance of the claimed contract."[2]

The Oklahoma Court of Civil Appeals held in the instant case that "Beaumont was the partner who was in a position to be a family caretaker while the other worked outside the home. Friends and family members do this." (Opinion at ¶12)

---

[1] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345.

[2] *York v. York*, 1953 OK 336, 270 P.2d 656.

STATEMENT OF THE CASE

The trial court stated that "[t]his has been a — and is a difficult case. Clearly there is a relationship of long standing between the decedent [Earl Meadows] and the plaintiff [Petitioner Beaumont], and between the decedent and the sons of the plaintiff. And were such relationship recognized by Oklahoma law we also wouldn't be here. Should the State recognize them? Probably so. Is the State likely to? Probably not." (Tr. at 190)

In 1977, Petitioner Samuel Kennegth Beaumont ("Beaumont") and decedent Earl Wayne Meadows ("Meadows") entered into an oral contract to live as a family. Beaumont brought his three sons with him and together they built a house on land next to Meadows' parents near Bristow, Oklahoma. During a life together of almost 24 years on the Crown M Ranch the men raised Beaumont's sons, Beaumont cared for Meadows' parents as they became ill and died, and Beaumont cared for Meadows after he had a stroke in 1997 until his death in September 2000. In 1995 Meadows executed a will leaving his estate to Beaumont. The will failed for want of a witness. Beaumont was not protected by the intestacy statute which protects married persons and blood relatives. Beaumont was left to pursue the estate by enforcing their oral contract. Because Meadows and Beaumont were not married or related by blood, Beaumont was entitled to rely on Oklahoma common law that presumed that his almost 24 years of service were consideration for the oral contract.

1. On September 12,2002, the trial court entered judgment without findings of fact or conclusions of law, stating that "Defendant's demurrer should be sustained. Plaintiff's claim to the estate of Earl Wayne Meadows is

hereby denied in full and Judgment is entered for Defendants." The trial court awarded Beaumont's ranch and the house he built with Meadows to Meadows' cousins.

In his closing argument, the heirs' attorney argued that Meadows and Beaumont were just like a married couple and therefore the presumption of gratuity should be construed *against* Beaumont, despite the fact that there was no legal relationship. This construction denies Beaumont the only protection available to gay men and lesbians under Oklahoma law and denies Beaumont equal protection of the law.

2. Beaumont filed his appeal seeking reversal. The American Civil Liberty Union, in its amicus brief, argued specifically that the trial court must have misapplied the presumption of non-gratuity to reach its conclusion. As a gay man in a committed un-married relationship, Beaumont belongs to the only class of persons that such a construction leaves without any protection or remedy. A heterosexual couple has protection on two levels, they can marry by statute or by operation of common law and in either case the survivor is protected by intestacy laws under 84 O.S. § 213. Unmarried heterosexual partners who specifically hold themselves out as not married do not have a common law marriage but the survivor enjoys the protection of the presumption of non-gratuity and is compensated for services directly, not under the intestacy statute.[3]

The Oklahoma Court of Civil Appeals ("COCA") issued its eleven-page Opinion on February 13, 2004, including finding that "[w]ith respect to the oral contract, the evidence supports the men's decision to form a family relationship." (Opinion at ¶ 9)

---

[3] *Hand v. Warlick*, 2001 OK CIV APP 105, 31 P.3d 1071.

3. On March 4, 2004, Beaumont Petitioned for Re-Hearing arguing that COCA had violated Beaumont's right to Equal Protection and misapplied Oklahoma case law when it construed the presumption of gratuity *against* him rather than in his favor. Beaumont argued that Equal Protection was implicated by the trial court's decision. In recognizing the long term relationship but in construing that relationship *against* Beaumont the trial court violated Beaumont's Fourteenth Amendment right to equal protection. Under Oklahoma law, marriage is a contract, but one that provides statutory protection to the survivor if his or her partner dies without a valid will.[4] As a homosexual in a committed long-term relationship, Beaumont is in the only class of persons not protected by either the intestacy laws or the failsafe protection of the presumption of gratuity necessary to enforce an oral contract. On March 18, 2004, COCA denied Beaumont's Petition for Rehearing.

4. On April 7, 2004, Beaumont filed his Petition for Certiorari with the Oklahoma Supreme Court. On June 1, 2004, the Oklahoma Supreme Court denied Beaumont's petition.

5. This Petition for a Writ of Certiorari follows pursuant to 28 U.S.C. § 1257(a) and § 2101(c).

The decision by COCA violates Beaumont's right to equal protection of the laws. Oklahoma common law presumes that persons who are related by blood or marriage provide services gratuitously, not in expectation of a return. In *York*, the Court found "[t]he facts concerning this relationship [between uncle and nephew] strongly induce the

---

[4] 43 O.S. § 1; 84 O.S. § 213.

belief, often referred to as a 'presumption' *in the case of close relatives*, that such services were furnished gratuitously . . ."[5] Although the presumption is construed against blood relatives the survivors are still protected by intestacy laws.[6] Beaumont is *not* related to Meadows by blood or marriage and is not protected by intestacy laws. COCA found Beaumont provided services for almost 24 years gratuitously.

Where there is no relation by blood or marriage, "[t]here is no presumption that such services were rendered gratuitously."[7] An invalid will may be used as evidence of an intent by the deceased to fulfill his part of the contract and devise pursuant thereto. "Here we have the substantiating evidence by the decedent himself. Such instrument, not being [properly witnessed], could not be admitted to probate as a will, yet it does lend certainty and definiteness to the contract and takes the terms thereof out of the realm of the speculative."[8] COCA found that the will by Meadows could be evidence of his intent to devise the estate to Beaumont, but did not construe Meadows' intent in favor of Beaumont. Because the trial court's judgment was pursuant to demurrer, failure to construe evidence solely in Beaumont's favor was error. "A demurrer to the evidence of plaintiff will be treated as a motion of judgment for the defendant. Thus the court shall weigh the evidence and render judgment if the evidence of the plaintiff is insufficient for judgment in his favor."[9]

---

[5] *York v. York*, 1953 OK 336, 270 P.2d 656 (emphasis provided).

[6] 84 O.S. § 213

[7] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345.

[8] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345.

[9] *Crossman v. Reeves*, 1992 OK 12, 825 P.2d 1330.

> In determining whether a plaintiff's evidence is sufficient to withstand a motion for directed verdict, *the trial court must consider as true* all evidence favorable to the plaintiff together with all reasonable inference to be drawn from it, and *disregard all conflicting evidence favorable to the movant.* Only if all the inferences to be draw from the evidence are in favor of the moving party will a directed verdict withstand appellate scrutiny.[10]

COCA and the trial court failed to properly consider Beaumont's evidence that he fully preformed the oral contract and that the will, although invalid, was evidence that Meadows attempted to comply.

Equal protection was first implicated by the trial court's judgment coupled with the comments from the bench and from the attorneys representing the heirs. The COCA Opinion reinforced Petitioner's belief that he was denied equal protection. "[T]he action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, . . ."[11] "The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."[12] "Oklahoma recognizes the existence of an 'equal protection clause,' as a component of our due process clause. Although

---

[10] *Harder v. F.C. Clinton, Inc.*, 1997 OK 137, 948 P.2d 298 (emphasis in original).

[11] *Shelley v. Kraemer*, 334 U.S. 1 (1948).

[12] *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930).

the Oklahoma Constitution does not include an equal protection clause like that found in its federal counterpart, Oklahoma has identified a functional equivalent of that clause in the anti-discrimination component of the due process section, Art. 2, § 7, Okl.Const."[13] Equal protection can be violated through the interpretation of a law.[14] "Whoever by virtue of his public position under a state government . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state and is clothed with the state's power, his act is that of the state."[15] An equal protection challenge may be based on common law.[16] Oklahoma does not have a statute that creates the presumption that persons related by blood or marriage provide services gratuitously and that persons who are not related by blood or marriage do not, but has created the presumption by common law.[17]

Beaumont and Meadows could not marry but still contracted to live as a family. "[C]hoices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the

---

[13] *Account Specialists & Credit Collections, Inc. v. Jackman*, 1998 OK CIV APP 175, 970 P.2d 202.

[14] *Francis v. Immigration & Naturalization Service*, 532 F.2d 268 (2nd Cir. 1976).

[15] *Allen v. Oklahoma City*, 1935 OK 1143, 52 P.2d 1054.

[16] *Forbush v. Wallace*, 341 F.Supp. 217 (M.D. Ala. 1971) *aff'd* 405 U.S. 970 (1972).

[17] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345; *York v. York*, 1953 OK 336, 270 P.2d 656.

role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme."[18] Beaumont and Meadows made a choice to enter into an intimate relationship in 1977, but they were faced with numerous obstacles. Until June 26, 2003, homosexual conduct was criminal in Oklahoma. "The stigma this criminal statute imposes, moreover, is not trivial."[19]

The services Beaumont provided cannot be evaluated as normal domestic and ranch services.[20] The only way Beaumont can recover is if the presumption is construed in his favor. As a man in a gay relationship Beaumont is in the unique position of being in the only class in which the presumption can be construed against him for complete denial of recovery. Under 84 O.S. § 213, a heterosexual couple living together as man and wife can create a common law marriage[21] by holding themselves out as married, with the survivor entitled to recover as a surviving spouse. The same result occurs if the heterosexual couple were married with a license and ceremony. Further if a heterosexual couple does *not* hold themselves out as married and the survivor does not recover under 84 O.S. § 213 as a surviving spouse, he or she still recovers under quantum merit because of the presumption that the services were not provided gratuitously.[22] It is *only*

---

[18] *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

[19] *Lawrence v. Texas*, 539 U.S. 558 (2003).

[20] *Brooks v. Yarbrough*, 37 F.2d 527 (10th Cir. 1930).

[21] *Standefer v. Standefer*, 2001 OK 37, 26 P.3d 104; *Tower v. Townie*, 1961 OK ____, 368 P.2d 488.

[22] *Hand v. Warlick*, 2001 OK CIV APP 105, 31 P.3d 1071 (heterosexual couple specifically held themselves out as *not* married and therefore no common law marriage existed. However, survivor of six year relationship still entitled to claim for value of services).

when the two persons are gay in a loving committed relationship, living as a family, that construing the presumption against the survivor creates an absolute bar to recovery. Beaumont is looking at such a bar.

REASONS FOR GRANTING THE PETITION

In Upholding of the Trial Court's Decision to Deny Beaumont the Protection of the Presumption of Non-Gratuity, the Oklahoma Court of Civil Appeals Issued a Decision that Conflicts with the Supreme Court's Equal Protection Jurisprudence.

The Oklahoma Court of Civil Appeals has set forth no legitimate reason for the State to construe the presumption of gratuity against Beaumont. Oklahoma law recognizes the presumption that one who is not related enjoys the presumption the he provides services *non*-gratuitously with an expectation of return. Oklahoma courts have consistently held that if the parties are not related, the presumption of non-gratuity applies and if they are related it does not. There are no Oklahoma cases in which a person who is not related by blood or marriage is denied *any* recovery, until Beaumont. The decision is clearly based on Beaumont being a homosexual. Applying a facially neutral law differently against different portions of the populace, although they are in similar circumstances, constitutes a denial of equal justice under the Fourteenth Amendment.[23] The Oklahoma court violated Beaumont's right to equal protection by applying the law against Beaumont because he is homosexual. The application of the law is not in conformance with the precedent set by this court in *Romer* and its progeny.

---

[23] *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

"Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."[24] Construing the presumption against Beaumont is inequitable and the court has not set forth any policy in favor of its construction. Beaumont worked for twenty-four years for his and Meadows' mutual benefit and the construction imposed by the courts results in a complete loss to him and a windfall for the heirs. Beaumont will lose the home he and Meadows built in 1977 and in which he has lived since, in addition to the ranch he helped build. Beaumont is not protected by 84 O.S. § 213, so construing the presumption of gratuity against him denies him equal protection. This construction punishes Beaumont as a gay man in a way that heterosexuals are not punished. Such punishment does not further any interest of the State. "If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest."[25]

---

[24] *Romer v. Evans*, 517 U.S. 620 (1996) *citing Shelley v. Kraemer*, 334 U.S. 1 (1948).

[25] *Romer v. Evans*, 517 U.S. 620 (1996) *citing Dept of Agriculture v. Moreno*, 413 U.S. 528 (1973) (emphasis in original).

CONCLUSION

For the foregoing reasons, a petition for a writ of certiorari should be granted.

Respectfully submitted,

MARK T. HAMBY
Counsel of Record
P. GAE WIDDOWS
BONHAM & HOWARD, P.L.L.C.
1500 Bank of America Center
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 744-7440

Attorneys for Petitioner

APPENDIX

APPENDIX A — OPINION OF THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA FILED FEBRUARY 13, 2004

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

No. 98,379

IN THE MATTER OF THE ESTATE OF EARL WAYNE MEADOWS, Deceased.

SAMUEL KENNEGTH BEAUMONT,

Plaintiff/Appellant,

vs.

SAMMY CASTATOR, as Executor and as potential heir; and KATHRYN L. CASTATOR CREASON; BETTY CARTER MASCHO; ROBERT MEADOWS; BILLIE J. CASTATOR MEYER, as potential heirs; and ANY OTHER PERSON CLAIMING AS AN HEIR, KNOWN OR UNKNOWN,

Defendants/Appellees.

APPEAL FROM THE DISTRICT COURT OF CREEK COUNTY, OKLAHOMA

HONORABLE RICHARD A. WOOLERY, JUDGE

AFFIRMED

Appendix A

Opinion by Kenneth L. Buettner, Judge:

Earl Wayne Meadows and Samuel Kennegth Beaumont lived together in Creek County, Oklahoma for nearly twenty-four years, when Meadows died. Beaumont offered for probate the purported last will and testament of Meadows, which left everything to Beaumont. However, the document failed for lack of a proper notarization and witnesses. Thereafter, Beaumont sued the estate claiming an oral contract to devise property, an implied partnership, or that a resulting trust should be formed of the estate property. The court sustained Defendants' (cousins of Meadows) demurrer. We affirm.

Meadows and Beaumont met in 1977 and within six months decided to live together as a family along with Beaumont's three young sons. The four of them moved to Meadows' ranch in Creek County, Oklahoma. Meadows' parents lived on contiguous property and had already deeded twenty acres to their son. After Beaumont and his three sons moved in, the parents deeded another forty acres to their son. The men, with the help of Meadows' father, contracted and built a house for the men and boys on the sixty-acre ranch.

Meadows worked as a comptroller at a factory in Bristow. At company picnics, he introduced the boys as his sons. Beaumont, who had worked with livestock previously, continued working with livestock on the ranch and took care of the house and chores. He was also a veteran and received a disability pension. The boys rode with Meadows to school in the mornings and returned to the ranch by school bus in the evenings. The boys called Meadows' parents "Grandma" and "Papa."

Appendix A

Meadows kept all accounts and property in his own name. He listed Beaumont's children as dependents for health insurance and income tax purposes, but not Beaumont. Beaumont stopped filing tax returns after the men started living together. He gave Meadows information about the ranch's accounting, which always experienced a loss. Beaumont did not have his own bank account. His disability/ pension checks and ranch receipts were deposited into accounts held in Meadows' name.

Beaumont was the primary person who helped care for Meadows' mother and father in their last illnesses. He also was the caretaker for Meadows during his last illness. Meadows listed Beaumont as his healthcare proxy. Meadows also made him beneficiary of his life insurance policy and his 401 (k) retirement account. A document purporting to be executed by Meadows, attempting to leave everything to Beaumont, was offered to show Meadow's intent to leave his estate to Beaumont. This document was not admitted to probate.

In his petition, Beaumont alleged that he and Meadows had entered a partnership/joint venture to share a household and rear Beaumont's three sons. He further alleged that they entered an oral contract in which each promised the other his entire estate existing at death. He stated that they commingled their assets. He also pled the equitable theories of constructive trust (resulting trust in the brief), unjust enrichment, and inter vivos gift.

At trial, Beaumont, one of his sons, and a family friend testified. Many documents were offered and quite a few accepted into evidence. After Beaumont rested, the trial court

sustained Defendants' demurrer. "In equity a defendant's 'demurrer' to the evidence is treated as a motion for judgment in demurrant's favor. Unlike in law actions, a demurrer in equity does not require the judge to disregard all evidence favorable to the demurrant's position, but, on the contrary, calls upon the chancellor-trier to consider and weigh all the evidence adduced to determine in whose favor it preponderates." *Snow v. Winn*, 1980 OK 27, ¶ 3, 607 P.2d 678, 680. "On appeal from the equity order sustaining a 'demurrer' to the evidence, the judgment of the trial court must be affirmed unless found to be against the clear weight of the evidence." *Id.*

Beaumont contends that the trial court erred in sustaining Defendants' demurrer thereby finding that he did not introduce adequate evidence that he and Meadows formed an enforceable oral contract. He also asserts that the trial court should have acted in equity and placed the corpus of the estate in a resulting trust so as not to unjustly enrich the Defendants with his years of labor and contribution to the value of the estate. Finally, he claims that the trial court should have found an implied partnership between him and Meadows.

With respect to the oral contract, the evidence supports the men's decision to form a family relationship. However, in order to prove an oral contract to devise property, the proof of specific performance sufficient to relieve the process from the statute of frauds must relate to devolution. There had to be proof that the men formed their relationship in order to inherit from each other. That was the key proof lacking. For instance, in *Holt v. Alexander*, 1952 OK 296, 248 P.2d

228, a daughter was promised by her stepfather that if she moved in with her mother and him and watched after and cared for them in their declining years, then he would will her the house. Neighbors testified that indeed the stepfather spoke of this arrangement. The Holt court noted the rule that complete performance of the oral contract by the one seeking to avail herself of the benefits of the contract takes the case out of the operation of the statute of frauds. It then, citing *Pancoast v. Eldridge*, 1928 OK 653, 273. P. 255, (syllabus by the court ¶ 1), restated the standard of proof required to specifically enforce an oral contract to devise property – ". . . so cogent, clear, and forcible as to leave no reasonable doubt as to its terms and character."

Likewise, in *Johnson v. Hazaleus*, 1959 OK 345, 338 P.2d 345, the court found that Hazaleus had performed his part of the oral contract to have the land Sharp promised to will to him. He farmed the land and took care of Sharp. Right before Sharp's suicide, Sharp attempted to write a holographic will leaving the farm to Hazaleus. The will failed for want of a date. The court allowed the will as proof of intent with respect to the oral contract.

What is evident from these cases is that the services performed would not have been performed except for the contract to devise property. *Cf. Estate of White*, 2001 OK CIV APP 105, 31 P.3d 1071, where a man and a woman were living together in, a spouse-like manner. The woman died and the man attempted to prove an oral contract for devolution of her real estate in his favor. The White court found that his services, such as repair work around the house, were not "'. . .exceptional and extraordinary' in the context

of the spousal-type relationship the parties maintained." *Id.* at ¶ 11, p. 1074.

The record does not support a conclusion that Beaumont formed his relationship with Meadows for the purpose of someday inheriting all of Meadow's property. The men desired to be a family. Beaumont did not show that he lived with Meadows for twenty-four years in a loving, committed relationship for the purpose of inheriting. The services that Beaumont provided were not unique or extraordinary. Rather, they were the sort of services two or more people living together, regardless of intimacy, do for the other. Each had their own talents and made their own contributions to the family relationship. Although he now claims that his acts of caring for Meadows' parents, then Meadows, while they were ill were not gratuitous, it is clear they were. There was certainly no intimation in 1977 that caretaking would be necessary. Beaumont was the partner who was in a position to be a family caretaker while the other worked outside the home. Friends and family members do this. In *York v. York*, 1953 OK 336, 270 P 2d 656, 658, ¶ 9, the court stated, with respect to the performance sufficient to take the oral contract out of the statute of frauds that it "must be clearly referable to the contract. . . ."

Beaumont also argues that the invalid will should have been admitted to show intent to leave him the property. The will was not admitted to probate because it was not properly notarized or witnessed. The record shows that Beaumont intended to make an offer of proof and the document is in the record forwarded for appeal, but whether he indeed made the offer is not so clear. Nonetheless, there

was testimony about the document and it can be argued that Meadows attempted to write a will in which he left everything to Beaumont. Even if admitted for that purpose, evidence of, intent to leave Beaumont the estate, it would not be evidence of a 1977 oral contract to leave him the estate. The trial court was entitled to find that their agreement was to be a family, on equal footing. A finding of no contract to devise property is not against the weight of the evidence.

Nor does the equitable theory of unjust enrichment apply in this case. "The term 'unjust enrichment' describes a condition resulting from the failure of a party to make restitution in circumstances where it is inequitable." *Lapkin v. Garland Bloodworth, Inc.*, 2001 OK CIV APP 29, ¶ 7, 23 P.3d 958, 961, citing *N.C. Corff Partnership, Ltd. v. OXY USA, Inc.*, 1996 OK CIV APP 92, 929 P.2d 288, 295 (cert. denied). It must first be noted that there is no requirement that heirs "merit" a statutory inheritance. When a person dies intestate, there is a statutory scheme of relatives by affinity and blood who inherit. In the case at bar, the statutory scheme was fulfilled by first cousins because Meadows' parents predeceased him, and he had no siblings, children, or spouse. The cousins inherit whatever Meadows had, which could very well be an unexpected and unearned windfall. It should be remembered that the principal item in the estate was the 60 acres given to Meadows by his parents. There is no evidence that the domestic chores performed by Beaumont over 24 years exceeded in value the room, board, medical care, insurance, and other items received by him from Meadows over that same period. There is no evidence that the value of the ranch was materially affected by the chores or that the bank accounts owned by Meadows at his death

were contributed to by Beaumont to an extent beyond living expenses. In fact the evidence is to the contrary. Beaumont claims to have contributed $200,000 over 24 years to the family. This is roughly $8,300 per year. In addition, the income from farm operations resulted in losses. And, notwithstanding the argument that Meadows could take advantage of the losses on his tax returns, that does not change losses into gains.

We do not mean to belittle the services that family members perform for each other. However, the performance of those services does not result in a claim for unjust enrichment. Although Meadows may have meant to leave his entire estate to Beaumont, he failed in the attempt. Beaumont has no claim in law or equity to the estate or its value. "One is not unjustly enriched by retaining benefits involuntarily acquired which law and equity give him absolutely without any obligation on his part to make restitution." *McBride v. Bridges*, 1950 OK 25, 215 P.2d 830 (syllabus by the court ¶ 1).

Finally, Beaumont seeks recovery pursuant to an implied partnership theory. A partnership is "an association of two or more persons to carry on as co-owners a business for profit. . . ." 54 O.S. Supp.1997 § 1-10 1(6). As a principal point, we will not equate persons living together and agreeing to the division of living expenses and chores as a business for partnership purposes. Beaumont does point to the ranching activities which he conducted, but which operated at a loss and were deducted from Meadows' income tax returns; to the pond he had installed; how he negotiated oil leases and filed the homestead exemption. There is no

question that Beaumont worked hard on the ranch and at the house. Oklahoma recognizes the existence of implied partnerships. *Mendonca v. Russel*, 1915 OK __, 150 P. 1061. However, we may only look to the purported business conducted, not the familial relationship. Beaumont testified that there was no profit so that even if an implied partnership had been found, there would have been no damages for him to collect. There is no error on this account.[1]

The American Civil Liberties Union of Oklahoma and American Civil Liberties Union (jointly ACLU) filed an amicus curiae brief in this case. They contend that the intestacy laws violated the Oklahoma Constitution by, on the one hand, refusing to recognize Beaumont's intimate, gay, relationship with Meadows where nonrecognition works to his disadvantage and, on the other hand, recognizing the relationship where recognition works to his disadvantage. The constitutionality of Oklahoma's laws was not questioned below, nor was Beaumont's sexual orientation the subject of evidence at trial, nor the basis for his claims. "Issues not properly presented to the trial court cannot be considered by this Court on appeal." *Steiger v. City National Bank of Tulsa*, 1967 OK 41, 424 P.2d 69 (syllabus by the court ¶ 3). We decline to address the issue raised by the ACLU.

For the reason's expressed, we AFFIRM the order of the trial court. ADAMS, J., and JONES, J., concur.

1. Beaumont raises for the first time on appeal the doctrine of "meretricious relationships" which courts of equity in some states use especially for equitable distribution of jointly acquired property by unmarried, cohabiting couples. We will not address this argument because it was not properly presented to the trial court in the first instance.

APPENDIX B — JUDGMENT OF THE DISTRICT COURT IN AND FOR CREEK COUNTY, STATE OF OKLAHOMA FILED SEPTEMBER 12, 2002

IN THE DISTRICT COURT IN AND FOR CREEK COUNTY STATE OF OKLAHOMA

NO. P-2000-119

Judge Richard A. Woolery

IN THE MATTER OF THE ESTATE OF
EARL WAYNE MEADOWS,

Deceased.

SAMUEL KENNEGTH BEAUMONT

Plaintiff,

vs.

SAMMY CASTATOR, as Executor and as potential Heir; and KATHRYN L. CASTATOR CREASON, BETTY CARTER MASCHO, ROBERT MEADOWS, BILLIE J. CASTATOR MEYER, as potential Heirs, and ANY OTHER PERSON CLAIMING AS AN HEIR, KNOWN OR UNKNOWN

Defendants.

Appendix B

JUDGMENT

The Ancillary Petition of the Plaintiff, Samuel K. Beaumont, came before this Court for trial on August 21, 2002. All parties were present and announced they were ready for trial. Representing the Plaintiff were Mark T. Hamby and P. Gae Widdows. Representing Samuel Castator as Administrator and as a potential heir and all named Defendants, except Betty Mascho, was Melvin L. Gilbertson. Representing Defendant, Betty C. Mascho, was James D. Bryant.

The Plaintiff presented his evidence and rested his case at which time the Defendants demurred to the Plaintiff's evidence and moved that judgment be entered for Defendants. The Court, having heard oral argument; having weighed all evidence admitted at trial, and having reviewed the relevant legal authorities, finds that the Defendant's demurrer should be sustained.

Plaintiff's claim to the estate of Earl Wayne Meadows is hereby denied in full and Judgment is entered for Defendants.

IT IS HEREBY ORDERED that Plaintiff's Motion for Reimbursement of Expenses is granted. The Estate of Earl Wayne Meadows is ordered to reimburse Mr. Beaumont the sum of $4,340.34 for taxes and insurance and that all other items of expense are subject to review by the Administrator.

IT IS FURTHER ORDERED that Plaintiff shall submit to the Administrator, Mr. Sammy Castator, the other listed claims for reimbursement of expenses advanced by

Appendix B

Mr. Beaumont to the Estate subsequent to the death of Mr. Meadows.

IT IS FURTHER ORDERED Defendants' Motion to Allocate Estate Taxes is granted and the Plaintiff is hereby ordered to reimburse the Estate the sum of $17.642.89.

s/ Richard A. Woolery
Hon. Richard A. Woolery

APPENDIX C — ORDER OF THE COURT OF CIVIL APPEALS, STATE OF OKLAHOMA FILED MARCH 18, 2004

RELEASE FOR PUBLICATION IN THE OKLAHOMA BAR JOURNAL BY ORDER OF COURT OF CIVIL APPEALS

DIVISION I

March 18, 2004

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

98,379 – In the Matter of the Estate of Earl Wayne Meadows, Deceased, Samuel Kennegth Beaumont, Plaintiff/Appellant, vs. Sammy Castator, as Executor and as potential heir; and Kathryn L. Castator Creason; Betty Carter Mascho; Robert Meadows; Billie J. Castator Meyer, as potential heirs; and Any Other Person Claiming as an Heir, Known or Unknown, Defendants/Appellees.

Plaintiff/Appellant's Petition for Rehearing is DENIED.

DONE BY ORDER OF THE COURT OF CIVIL APPEALS this 18th day of March, 2004.

s/ Carl B. Jones
CARL B. JONES, Acting Presiding Judge

APPENDIX D — ORDER OF THE SUPREME COURT OF THE STATE OF OKLAHOMA DENYING PETITION FOR CERTIORARI FILED JUNE 1, 2004

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, June 1, 2004

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

98,379 In the Matter of the Estate of Earl Wayne Meadows, Deceased; Samuel Kennegth Beaumont v. Sammy Castator, as Executor and as potential heir, et al.

Petition for certiorari is denied.
CONCUR; Watt, C.J., Opala, V.C.J., Hodges, Lavender, Hargrave, Kauger, Winchester, Edmondson, JJ.
DISSENT: Boudreau, J.

* * * *

s/ Joseph M. Watt
CHIEF JUSTICE

(2)

No. 04-271

Supreme Court, U.S.
FILED
SEP 30 2004
OFFICE OF THE CLERK

In The
Supreme Court of the United States

SAMUEL KENNETH BEAUMONT,

PETITIONER,

v.

SAMMY CASTATOR AS EXECUTOR OF
THE ESTATE OF EARL WAYNE MEADOWS AND AS HEIR;
AND KATHYRN L. CASTATOR CREASON,
BETTY CARTER MASCHO, ROBERT MEADOWS AND
BILLIE J. CASTATOR MEYER, AS HEIRS,
And Any Other Person Claiming as Heir, Known or Unknown,

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS DIVISION I
OF THE STATE OF OKLAHOMA

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

KEITH F. SELLERS
Counsel of Record
JAMES D. BRYANT
7134 Yale Avenue, Suite 110
Tulsa, Oklahoma 74136
918-584-3696
Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Introduction	1
Statement of the Case	1
A. Factual Background	1
B. Petitioner's Description of the Case Is Not Completely Accurate	3
C. Petitioner's Description of Oklahoma Law Is Not Completely Accurate	4
Reasons for Denying Writ	6
I. Constitutionality of a Presumption of Gratuity Was Not Properly Raised in the State Court	6
II. A "Presumption of Gratuity" Was Not Prejudicial to Petitioner	7
A. A So-called "Presumption of Gratuity" Is Not a True Evidentiary Presumption or Substantive Rule of Law in Oklahoma	7
B. A "Presumption of Gratuity" Would Not Shift the Burden of Proof	9
C. The Introduction of Direct Evidence That Services Were Gratuitous and Not Contractual Caused Any Evidentiary Presumption to Disappear	10
III. The Change in Oklahoma Law Urged by Petitioner Would Contravene the Fundamental Precept of Neutrality of the Law	11
Conclusion	12

TABLE OF AUTHORITIES

Page

CASES

Adams v. Robertson, 520 U.S. 83 (1997) 7

City of Okla. City v. State ex rel. Okla. Dep't. of Labor, 918 P.2d 26 (Okla. 1995) 6

Hand v. Warlick, 31 P.3d 1071 (Okla. App. 2001) 5

In re Application of Goodwin, 597 P.2d 762 (Okla. 1979) 6

Kurn v. Thompson, 105 P.2d 422 (Okla. 1940) 9

Mobile, Jackson & K.C. R.R. Co. v. Turnipseed, 219 U.S. 35 (1910) 10

Morland Dev. Co. v. City of Tulsa, 596 P.2d 1255 (Okla. 1979) 7

Romer v. Evans, 517 U.S. 620 (1995) 11

Salsburg v. Maryland, 346 U.S. 545 (1954) 11

Steiger v. City Nat'l. Bank of Tulsa, 424 P.2d 69 (Okla. 1967) 6

Wilson v. Minor, 220 F.3d 1297 (11th Cir. 2000) 9

York v. York, 270 P.2d 656 (Okla. 1953) 5, 7, 8, 12

STATUTES

OKLA. STAT. tit. 12, § 2303 ..... 9, 10

RULES

Rules of the Supreme Court of the United States, Rule 10 1

Oklahoma Supreme Court Rules, Rule 1.12 6

TABLE OF AUTHORITIES – Continued

Page

ARTICLES AND TREATISES

J. Draper, *Establishment of 'Family' Relationship to Raise Presumption That Services Were Rendered Gratuitously, as Between Persons Living in Same Household but Not Related by Blood or Affinity*, 92 A.L.R.3d 726 (1979) 4

21 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 5124 (West 2004) 8

INTRODUCTION

Respondents respectfully pray that this Honorable Court deny the Petition for Writ of Certiorari filed herein. Petitioner fails to allege any reason for invoking this Court's certiorari jurisdiction beyond his contention that the Oklahoma Court may recognize a mere rebuttable presumption – a so-called "presumption of gratuity" – against a party who is seeking to prove the existence of an oral contract to devise against the estate of his deceased companion or family member. Petitioner fails to identify any reasons comparable to the reasons set forth in Rule 10 of the Rules of the Supreme Court for the exercise of this Honorable Court's discretionary power. Accordingly, Petitioner's request for a writ of certiorari should be denied.

STATEMENT OF THE CASE

A. Factual Background

Earl Wayne Meadows died in 2000. Most of Meadows' probate estate consisted of eighty acres of real property, which has been in the Meadows family for several generations. A portion of the property was given to Meadows by his parents prior to 1977 and a greater portion was inherited from the estate of Meadow's mother who died in 1995 following the death of Meadows' father.

Meadows had a house constructed on the land, which he financed from a loan from his parents and from a bank loan which he alone signed. Meadows held title to the property in his name alone.

Meadows met Petitioner in 1977 and the two men lived at the same residence from 1977 to the date of Meadows death in 2000.

Meadows had no children and no siblings. Meadows' heirs under Oklahoma law are the lineal descendants of Meadows' grandparents who had in earlier years owned the real property now in Meadows' estate.

After Meadows' death, Petitioner filed a creditor's claim against the estate and the heirs alleging that Meadows had breached an oral contract formed in 1977 to devise all of Meadows' property to Petitioner, including the real property acquired by early gift and later inheritance from Meadows' parents.

At the trial of Petitioner's claim, Petitioner conceded there was never any discussion between himself and Meadows of a contract to devise. Petitioner testified that Meadows had provided financial support to Petitioner and that Petitioner handled household services. Petitioner admitted that the services he performed benefitted himself as much as they benefitted Meadows. Petitioner admitted that the division of labor between himself and Meadows was "natural" and made "unconsciously," and would have occurred irrespective of whether there were any contract. No evidence was introduced that Meadows was gay or that Meadows ever held himself out as being married or that Meadows would have married had Oklahoma law permitted him do so.

Respondents moved for judgment on the ground that evidence presented failed to establish the necessary factual elements of a contract to devise. The Trial Court, after "weighing all evidence admitted at trial," entered judgment for Respondents. See Appendix B to Petition.

On appeal, the Oklahoma Court of Civil Appeals affirmed, finding no evidence of an enforceable oral contract to devise an estate: "The record does not support a conclusion that Petitioner formed his relationship with Meadows for the purpose of someday inheriting all of Meadows property." Appendix A to Petition, page 6a. The opinion of the Court of Civil Appeals does not rest on the application of any rebuttable presumption. There is no mention of a "presumption of gratuity" in the opinion. On June 1, 2004, the Oklahoma Supreme Court denied a Petition for Certiorari filed by Petitioner.

Petitioner filed in the United States Supreme Court a Petition for Writ of Certiorari (hereinafter referred to as the "Petition").

B. Petitioner's Description of the Case Is Not Completely Accurate

Petitioner does not provide a completely accurate description of the proceedings below. Petitioner suggests erroneously that Respondents urged the Trial Court to decide, and that the Trial Court did decide, the case solely on the basis of a presumption and in the absence of factual evidence. In truth, a number of witnesses testified at trial and the Court considered and weighed all of the evidence. The evidence taken as a whole failed to establish any of the elements of a contract to devise an estate. Failure to satisfy the Statute of Frauds was only one of the elements on which Petitioner's proof failed.

Respondents did not urge the application of any evidentiary presumption. To the contrary, after Petitioner raised the issue, Respondents argued as follows:

> I suggest we do not need a presumption of gratuity because the plaintiff has established with his own testimony that he did these things unconsciously, he did these things out of love, not in reference to any contract.

Citing 92 A.L.R.3d 726 (1979), Respondents urged that a reasonable inference that services are gratuitous and not contractual may arise from evidence of a "family" relationship even where the parties are "not related by blood or affinity" and even where the relationship is "strictly platonic."[1] Respondents did not believe and never suggested that the sexual orientation or sexual involvement of Petitioner was a relevant factor. In fact, there was no evidence presented by either side at trial as to Petitioner's sexual orientation or sexual involvement.

There is no indication in the record that the trial court relied on any evidentiary presumption. In light of the evidence actually presented, no presumption was necessary for the Court to conclude that Petitioner's services were not consideration for, or partial performance of, an alleged oral contract to devise.

C. Petitioner's Description of Oklahoma Law Is Not Completely Accurate.

Petitioner states repeatedly and erroneously that the Oklahoma Court, in cases addressing an alleged contract to devise, recognizes a "presumption of *non-gratuity*" for "one who is not related." See, for example, Petition, pages

---

[1] J. Draper, *Establishment of 'Family' Relationship to Raise Presumption That Services Were Rendered Gratuitously, as Between Persons Living in Same Household but Not Related by Blood or Affinity*, 92 A.L.R.3d 726 (1979).

4 and 10. Contrary to Petitioner's assertion, there is no indication in any of the Oklahoma cases cited in the Petition that the Oklahoma Court has ever recognized a so-called "presumption of *non-gratuity*" where an oral contract to devise is asserted against a decedent's estate. In every case, the burden of proving all of the elements of a contract to devise rests heavily on the claimant.

Petitioner states erroneously that "there are no Oklahoma cases in which a person who is not related by blood or marriage is denied *any* recovery, until Beaumont." Petition page 10. Petitioner's assertion is contradicted even in one of the Oklahoma cases cited in the Petition. In *Hand v. Warlick*, 31 P.3d 1071 (Okla. App. 2001), cited at Petitioner's footnote 3, where a man and his deceased companion were *unrelated* and *unmarried*, the Oklahoma Court denied a claim of an oral contract to devise, finding that services by the claimant were performed "not because of any feeling of contractual obligation, but from motives of mutual love, affection and helpfulness." *Id.* at 1074 (quoting *York v. York*, 270 P.2d 656 (Okla. 1953), cited at Petitioner's footnote 2).

Petitioner states erroneously that the Oklahoma court "applied the law against Beaumont because he is homosexual." Petition page 10. To the contrary, there is no indication in the record below that sexual orientation was raised, let alone considered by the Court in its decision. Sexual orientation and gender were not relevant factors in any of the Oklahoma cases cited in the Petition. In every case, the Court sought to determine as a matter of fact whether services by the claimant evidenced an oral contract to devise.

REASONS FOR DENYING WRIT

I.

Constitutionality of a Presumption of Gratuity Was Not Properly Raised in the State Court.

> The constitutionality of Oklahoma's laws was not questioned below, nor was Beaumont's sexual orientation the subject of evidence at trial, nor the basis for his claims. "Issues not properly presented to the trial court cannot be considered by this Court on appeal."

Opinion of Oklahoma Court of Civil Appeals, Appendix A, page 9a (citing *Steiger v. City National Bank of Tulsa*, 424 P.2d 69 (Okla. 1967)).

The constitutionality of Oklahoma's laws was not raised in the Trial Court or in the Petition in Error before the Oklahoma Supreme Court or in Appellant's Brief in Chief before the Oklahoma Court of Civil Appeals. The contention that mere recognition of a so-called "presumption of gratuity" violated the Constitution was introduced for the first time in the amicus curiae brief filed by the American Civil Liberties Union of Oklahoma and American Civil Liberties Union (jointly ACLU) *after* Appellant's filing of the Brief in Chief on appeal. The Oklahoma Court, under established procedure, declined to address the ACLU's issue on appeal, because the issue had not been properly presented to the Trial Court and preserved for appeal.[2] Now, Petitioner is attempting to attract the

---

[2] ACLU's attempt, as amicus curiae, to inject issues of constitutionality into the appeal was rejected by the Oklahoma Court under established Oklahoma procedure. Oklahoma Supreme Court Rule 1.12 ("brief of an amicus curiae . . . is confined to the issues raised by the parties"); *City of Oklahoma City v. State ex rel. Okla. Dep't. of Labor*,

(Continued on following page)

attention of this Honorable Court in respect of an issue not properly raised below. For that reason alone, certiorari should be denied. *Adams v. Robertson*, 520 U.S. 83, 87-88 (1997) (dismissing writ of certiorari as improvidently granted where Petitioner failed to demonstrate compliance with applicable state rules for raising federal due process claim).

II.

A "Presumption of Gratuity" Was Not Prejudicial to Petitioner.

The premise of Petitioner's equal protection argument is that the application of a so-called "presumption of gratuity" deprived him of what would otherwise have been an enforceable contract to devise. For the following reasons, Petitioner's premise cannot be accepted.

A. A So-called "Presumption of Gratuity" Is Not a True Evidentiary Presumption or Substantive Rule of Law in Oklahoma.

Oklahoma does not recognize a presumption of gratuity as an evidentiary presumption or as a substantive rule of law.[3] The Oklahoma Court, in *York v. York*, 270 P.2d 656

---

918 P.2d 26, 32, n.4 (Okla. 1995) (Amici curiae's participation must stand confined to issues raised in the trial tribunal and preserved for appellate review); *Morland Dev. Co. v. City of Tulsa*, 596 P.2d 1255, 1258 (Okla. 1979) ("Amici Curiae must accept the issues as made and cannot raise constitutional questions not presented by the litigants").

[3] The word "presumption" has been used in a variety of ways: referring to permissible inferences (e.g., presumption against spoliators of evidence), rules for allocating the burden of proof (e.g., presumption of innocence), and conclusive presumptions which are really rules of

(Continued on following page)

(Okla. 1953), observed that conduct reasonably explained without reference to an alleged oral contract to devise cannot constitute part performance to avoid the statute of frauds unless "it should appear with reasonable certainty that the services would not have been performed but for the oral agreement." *Id.* at 659. The Court then stated:

> The *facts* concerning this relationship strongly induce the *belief*, often referred to as a 'presumption' in the case of close relatives, that such services were furnished gratuitously and more because of mutual love, affection, esteem, high regard, gratitude, and/or hope of some future but undetermined reward, than in performance of the claimed contract.

Id. at 660 (emphasis added). It is obvious from this passing mention of "a presumption" that the Oklahoma Court was not referring to a substantive rule of law or even to a true evidentiary presumption. Instead, the Court merely acknowledged a commonly held "belief" – at most, a permissible inference the trier of fact may draw from the evidence. The decision in *York* merely reflects the facts proven at trial and is not dependent upon the application of any evidentiary presumption.

In the present case, Petitioner was permitted to present to the trier of fact any admissible evidence probative of the elements of an oral contract to devise. The presentation of evidence was completely unfettered by any

---

substantive law (e.g., in a products liability case a manufacturer is presumed to know the defects in his own products). 21 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 5124 (West 2004).

presumption. The Court considered all of the evidence and determined that the requisite elements of an enforceable oral contract to devise were not proven. Petitioner's claim failed, not because of any evidentiary presumption, but because there was no evidence of a contract to devise.

B. A "Presumption of Gratuity" Would Not Shift the Burden of Proof.

The effect of a true rebuttable evidentiary presumption under Oklahoma law is to shift the burden of proof from one party to another. OKLA. STAT. tit. 12, § 2303. Any presumption that would "shift" the burden of proof to a party who already has the burden of proof even without the presumption cannot prejudice that party.[4] Because Petitioner already had the burden of proving the elements of a contract to devise and exception to the Statute of Frauds, the invoking of a so-called "presumption of gratuity" would not "shift" the burden. For example, in *Kurn v. Thompson*, 105 P.2d 422 (Okla. 1940), where the defendant railroad raised the affirmative defense of contributory negligence, the erroneous jury instruction that "it must be presumed the deceased looked and listened before driving onto the tracks, unless there is evidence to the contrary" was merely harmless error, inasmuch as the defendant already had the burden of proving affirmatively that the deceased was contributorily negligent, that is, did not look and listen. As in the present case, the burden of proof would be the same even in absence of the purported presumption.

---

[4] There can be no deprivation of equal protection where there is no harm. *Wilson v. Minor*, 220 F.3d 1297, 1312 (11th Cir. 2000) (rejecting equal protection claim where plaintiff failed to "articulate any cognizable theory of harm under equal protection . . . jurisprudence.")

C. The Introduction of Direct Evidence That Services Were Gratuitous and Not Contractual Caused Any Evidentiary Presumption to Disappear.

Where a rebuttable presumption is applied to shift the burden of proof, any evidence of the non-existence of the presumed fact causes the presumption to disappear and "the existence of the fact otherwise presumed is then determined from the evidence in the same manner as if no presumption had been operable in the case."[5] In the present case, the *fact* that Petitioner's services were gratuitous and not contractual was proven by direct evidence.[6] Thus, even if the "presumption of gratuity" were a true evidentiary presumption (which it is not) and even if it had shifted the burden of proof (which it did not), the admission of direct evidence dispelled the presumption, eliminating any possible prejudice. See *Mobile, Jackson & K.C. R.R. Co. v. Turnipseed*, 219 U.S. 35 (1910).

In any event, the mere application of a rebuttable presumption as a rule of evidence, and not as a conclusive rule of substantive law, could not violate the equal protection clause of the Constitution. *Id.* 219 U.S. at 43 ("The statute does not, therefore, deny the equal protection of the

---

[5] OKLA. STAT. tit. 12, § 2303(2).

[6] Petitioner merely kept doing the same household chores in the same place in the same way he had been doing before the alleged contract and described the division of labor between himself and Meadows as having been made "unconsciously." Petitioner admitted that his household chores benefitted himself as much or more than they did the Deceased and admitted that he would have performed the chores irrespective of whether there were any contract. The only disinterested witness called to testify at trial contradicted Petitioner's testimony about an alleged contract to devise. Tr. 124-27.

law or otherwise fail in due process of law, because it creates a presumption of liability, since its operation is only to supply an inference of liability in the absence of other evidence contradicting such inference"); *Salsburg v. Maryland*, 346 U.S. 545, 550 (1954) ("Rules of evidence, being procedural in their nature, are peculiarly discretionary with the law-making authority, one of whose primary responsibilities is to prescribe procedures for enforcing its laws").

III.

The Change in Oklahoma Law Urged by Petitioner Would Contravene the Fundamental Precept of Neutrality of the Law.

Petitioner would make a unique rule of law based solely on sexual orientation that would contravene the fundamental precept of neutrality of the law. *Romer v. Evans*, 517 U.S. 620, 623 (1995) ("The Constitution enforces a commitment to the law's neutrality where the rights of persons are at stake."). Petitioner would have the Court overrule the will of the Oklahoma legislature by imposing judicial rules that would make an unmarried man the *sole beneficiary* of the intestate estate of his gay companion to the complete exclusion of all those whom the legislature has identified as the lawful heirs. The issue of whether in a particular instance the lawful heirs of an intestate decedent would be divested, would turn on the posthumous determination by the Court as to whether or not the decedent was "gay." By what proof would the Court distinguish between a gay and a non-gay decedent? Would the Court-imposed "contract" to devise cover separately acquired or inherited property such as was received by Meadows from his parents? Would the Court-imposed "contract" divest the lawful heirs of 100% of the decedent's estate or of some lesser portion? Would a beneficiary of the

Court-imposed "contract" to devise fare better than would a surviving spouse of a lawfully married decedent who died intestate?

Under the law of Oklahoma, a gay person in Oklahoma contemplating death and wishing to leave property to a friend or companion has the same legal options as does an unmarried heterosexual person. A gay person seeking to prove an oral contract to devise against the estate of a decedent has the same burden of proof as does a heterosexual person.

CONCLUSION

An alleged oral contract "to distribute the estate of a deceased person in a different way from that provided by law, should be looked upon skeptically and the evidence to establish it weighed in the most scrupulous manner." *York*, 270 P.2d at 658. Under Oklahoma law, any person who establishes clear proof of an oral contract to devise may obtain recovery against a decedent's estate. No presumption is recognized that would relieve any claimant of the burden of proving all elements of the cause of action. In the present case, Petitioner has been afforded equal protection under the law. With all due respect, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

KEITH F. SELLERS
Counsel of Record
JAMES D. BRYANT
7134 Yale Avenue, Suite 110
Tulsa, Oklahoma 74136
918-584-3696
Attorneys for Respondents